IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3141 of 2002

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SHIVLAL HASMUKHBHAI SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for Petitioner No. 1

MR M.R. MENGDEY, AGP, for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 18/10/2004

ORAL JUDGEMENT

1. The petitioner herein has challenged the order order dated 9.7.1998 cancelling the retail kerosene licence as also the order of the appellate authority vide order dated 12.10.1999 and the order of revisional

authority dated 4.5.2001.

2. The petitioner was holding retail licence since the year 1991 issued under the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) order, 1981 (the Order for short). In the month of January 1999 an inspection was conducted at the shop of the petitioner. Thereafter an order dated 9.7.1999 was issued by the Licensing Authority terminating the contract as well as the licence of the petitioner by giving 30 days notice. The petitioner challenged the said order by way of appeal before the Appellate authority which came to be dismissed by order dated 12.10.1999. The revision application filed against the said order has also been rejected by the State Government. Hence the petitioner has filed the present petition.

3. Heard the learned counsel for the respective parties. From the order dated 9th July 1999 it is clear that the cause of action for cancelling the licence was the alleged breach of certain conditions. However, the order does not speak about any opportunity of hearing is given to the petitioner at any point of time before passing the impugned order. The order has been passed for alleged breach of conditions and without following the provisions under clause 20 of the Agreement. Looking to the facts and circumstances of the case I am of the opinion that the the respondent authority ought not to have resorted to condition no.22 of the Contract.

4. In view of the above I am inclined to allow the petition only on the ground of principles of violation of natural justice. However, it is open for the respondents to invoke clause 20 of the Agreement and to proceed against the petitioner, I am not entering into the merits of the case, which may cause prejudice to both the sides.

5. In the premises aforesaid, the petition is allowed. The impugned orders dated 9.7.1999, the appellate order dated 12.10.99 and the order of revisional authority dated 4.5.2001 are quashed and set aside. The respondent authority shall pass fresh orders after following the proper procedure as stated above and pending those proceedings the parties will not be restored to their original position.The District Supply Officer shall proceed and complete the proceedings after supplying necessary documents which are relied upon by the respondents, within four months from the date of receipt of writ of this Court. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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